

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Civil File No.: 2:22-cv-07841-GRB-AYS

Jenna Marie Duncan, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

Kahala Franchising, L.L.C.,

Defendant.

**DECLARATION OF MICHAEL
COOGAN IN SUPPORT OF
DEFENDANT'S MEMORANDUM OF
LAW IN SUPPORT OF MOTION TO
DISMISS PLAINTIFF'S FIRST
AMENDED CLASS ACTION
COMPLAINT**

I, Michael Coogan, hereby state and declare as follows:

1. I am a Regional Director of Operations for Kahala Brands.
2. On March 22, 2023, I was present at the Levittown, New York Cold Stone Creamery location and took the photos identified in the Cold Stone Letter identified as Exhibit A to the declaration of Kyle S. Willems.
3. I also have personal knowledge of the Levittown, New York Cold Stone Creamery location. The photographs taken show the same layout that a consumer would have seen during the relevant time period alleged in Plaintiff's lawsuit.
4. Specifically, customers would have seen the boards as identified in the images located on pages 4, 6, 8, and 9 of the Cold Stone Letter. Customers would also have seen the ice cream located in the refrigeration unit as identified in the images located on pages 7, 8, and 10 of the Cold Stone Letter.

5. While the location of specific ice cream flavors may have changed within the refrigeration unit, the placards shown in the images are the same as what would have been used during the relevant time period in this lawsuit.

6. I also have personal knowledge of the Cold Stone consumer experience. When a consumer enters a Cold Stone, they stand in front of the refrigeration unit as identified on page 8 of the Cold Stone Letter.

7. Behind the refrigeration unit is a large menu board with a variety of ice cream signature creations, shakes, and smoothies a consumer can order.

8. If a consumer does not want a pre-set shake, smoothie, or ice cream signature creation, the board also has a “Create You Own” section which a consumer can follow in three steps, which is also visible on page 8 of the Cold Stone Letter. These steps are “1. Select a Flavor & Size; 2. Choose Mix-Ins; 3. Add a Waffle Cone or Bowl.”

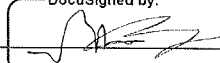
9. To assist consumers in selecting their desired ice cream flavor in Step 1, Cold Stone places flavor placards in the refrigeration unit’s window next to the corresponding ice cream, as indicated on page 8 of the Cold Stone Letter. For the products at issue in this lawsuit, no flavor placard indicates that they are “made with” any particular ingredient. This holds true during the relevant time period in this lawsuit.

10. Consumers also view the ice cream themselves in the refrigeration unit. Notably, for the products at issue in this lawsuit, consumers are able to see for themselves that there are no “chunks” of what appear to be any specific ingredients in the ice cream that would indicate a particular ice cream contains a certain ingredient.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Signed on this 10 day of January 2024 in the State of New York, County of Queens.

Respectfully Submitted,

DocuSigned by:

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Certificate Of Completion

Envelope Id: EA9849D98E814FAB9B677F4B3C10F40F

Status: Completed

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Leslie Pleviak

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lpleviak@kahalamgmt.com

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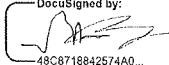
1/10/2024 11:46:39 AM

lpleviak@kahalamgmt.com

Signer Events

Michael Coogan

mcoogan@kahalamgmt.com

Security Level: Email, Account Authentication
(None)**Signature**DocuSigned by:

48C8718842574A0...

Signature Adoption: Drawn on Device

Using IP Address: 104.28.55.227

Signed using mobile

Timestamp

Sent: 1/10/2024 11:47:24 AM

Viewed: 1/10/2024 12:26:16 PM

Signed: 1/10/2024 12:27:05 PM

Freeform Signing

Electronic Record and Signature Disclosure:

Accepted: 1/10/2024 12:26:16 PM

ID: f2ee8cf3-4536-46ed-bf9c-afaf71095874

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp****Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent

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Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> • Allow per session cookies

- | |
|---|
| <ul style="list-style-type: none">• Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection |
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